

(4) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(5) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(6) The nature of the measures that have been and are being taken to protect the information from disclosure.

(e) *Request for disclosure.* (1) Requests for disclosure of information submitted, reported, or collected pursuant to this part shall be in accordance with 15 CFR 903.7.

(2) NOAA will not usually determine whether confidential treatment is warranted until it receives a request for disclosure of the information, unless it would encourage the submission of information not required to be submitted under this part.

(3) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator will notify immediately the person who submitted the information and:

(i) Inform such person of the date by which NOAA must determine whether confidential treatment is warranted in order to comply with the request for disclosure (usually within 10 working days of receipt of the request); and

(ii) Inquire whether such person continues to request confidential treatment.

(4) If the person waives or withdraws a request for confidential treatment in full or in part, the person shall deliver to NOAA a written statement to that effect. If the person confirms the request for confidential treatment, such person is strongly encouraged to deliver to NOAA a written statement in sufficient time for NOAA to fully consider it in making its formal determination (generally, not later than the close of business on the fourth working day after being notified under paragraph (e)(3) of this section). Such statement may:

(i) Address the issues listed in paragraph (d) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(ii) Update or supplement any statement previously submitted under paragraph (d) of this section; and

(iii) Present arguments against disclosure of the information.

(5) To the extent permitted by applicable law, part or all of any statement submitted under this section will be treated as confidential if so requested by the person submitting the response.

§ 960.9 Review procedures.

(a) The Administrator shall immediately forward a copy of any application or a summary thereof to the Department of Defense, the Department of State, and any other Federal agencies determined to have a substantial interest in the proposed activity, such as the National Aeronautics and Space Administration, and the Department of Transportation. The Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant.

(b) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by Subpart B of these regulations. In making this determination the Administrator shall consider timely comments provided by the Federal agencies consulted under paragraph (a) of this section.

(c) If the Administrator determines that all of the required information is not contained in the application, the Administrator may require by written notice to the applicant, that the applicant file further information, analysis, or explanation.

(d) If the Administrator requires further information under paragraph (c) of this section, the time limitations prescribed by section 401(c) of the Act do not begin to run until the date on which the Administrator determines that the application appears to be complete and so notifies the applicant.

(e) Within sixty days of receipt of a complete application, each Federal agency consulted under paragraph (a) of this section shall recommend approval or disapproval of the application in writing.

(1) If the Secretary of Defense or the Secretary of State determines that the

application may not be approved without modifications or conditions consistent with national security concerns or international obligations, the determination shall clearly state why the modifications or conditions are necessary to accomplish the intended purpose.

(2) If any other agency recommends disapproval, it shall state why it believes the application does not comply with any law or regulation within its area of responsibility and how it believes the application may be amended or the license conditioned to comply with the law or regulation in question.

(f) All determinations and recommendations shall be made a part of the public record for that application. If the recommendation contains classified material, the public record shall reflect at what point in the document deletions have been made.

§ 960.10 Timely approval or denial of application and issuance of license.

(a) The Administrator shall approve or deny a complete application as soon as practicable. If final action has not occurred within one hundred and twenty days after receipt, the Administrator shall inform the applicant of any pending issues and of actions required to resolve them.

(b) If the Administrator denies the application, he or she shall provide the applicant with a concise statement in writing of the reasons therefor. Within 30 days after receipt of a notice of denial, the applicant may appeal by written notice to the Administrator and may request either an informal hearing or a formal hearing to be held in accordance with the procedures set forth at 15 CFR part 904, subpart C.

(c) As soon as practicable after the close of a hearing or, in the case of a formal hearing, the issuance of a recommended decision by the Administrative Law Judge, the Administrator shall issue the final decision and serve notice thereof on the applicant. This decision shall be considered final agency action.

§ 960.11 Criteria for approval or denial.

Before approving an application and issuing a license or an amendment to a

license, the Administrator shall find in writing that:

(a) The licensee will operate the system in a manner consistent with national security and the international obligations of the U.S.;

(b) The licensee will make available unenhanced data to all potential users on a nondiscriminatory basis in accordance with sections 104(3) and 601 of the Act.

(1) If the licensee or any affiliate or subsidiary will engage in any value-added activities, the plan required by section 402(b)(9)(B) of the Act must clearly identify all such value-added activities, whether conducted by the license itself or by any affiliate or subsidiary, and ensure that any unenhanced data generated by the system will be made available to all potential users on a nondiscriminatory basis;

(2) Where the value-added activity described in the plan required by section 402(b)(9) of the Act consists of processing data for general publication, the plan shall satisfy the requirements of this section if:

(i) Publication is timely;

(ii) The medium in which the imagery will be published will be available to any potential subscriber on a nondiscriminatory basis; and

(iii) All unenhanced data from which the imagery is derived will be available on a nondiscriminatory basis at the time of publication or within a reasonable time thereafter.

(c) The licensee will make available to the Administrator at the reasonable cost of reproduction and transmission all unenhanced data which the Administrator may request for a basic data set pursuant to section 602 of the Act; and

(d) If the space system will utilize a space platform owned or operated by the license, the licensee has agreed to dispose of such platform in a satisfactory manner.

In making the findings required by paragraph (a) of this section, the Administrator shall be entitled to rely upon the written recommendations of the Departments of Defense and State described in § 960.9(e).